

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

FUNCTION MEDIA, L.L.C., )  
                          ) ( CIVIL DOCKET NO.  
                          ) ( 2:07-CV-279-CE  
VS.                      ) ( MARSHALL, TEXAS  
                          ) ( )  
GOOGLE, INC., AND      ) ( JANUARY 12, 2010  
YAHOO, INC.              ) ( 1:30 P.M.

MOTIONS HEARING

BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: (See Attorney Sign-In Sheet)

FOR THE DEFENDANTS: (See Attorney Sign-In Sheet)

COURT REPORTER: MS. SHELLY HOLMES, CSR  
                          Deputy Official Court Reporter  
                          2593 Myrtle Road  
                          Diana, Texas 75640  
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(Proceedings recorded by mechanical stenography,  
transcript produced on a CAT system.)

## I N D E X

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COURT SECURITY OFFICER: All rise.

THE COURT: Please be seated.

I've got a motions hearing set in Function  
Media versus Google. It's 2:07-CV-279.

What says the plaintiff?

MR. TRIBBLE: Your Honor -- Your Honor, good afternoon, Max Tribble for the plaintiff. Plaintiff is ready.

THE COURT: For the defendant?

MR. GILLAM: Gil Gillam, Charlie Verhoeven, and Amy Candido for Google. We're ready.

THE COURT: All right. Several matters to take up today. The first one is the motion to seal and close the courtroom. Tell me -- the way this is ordinarily handled is that if there's some portion that comes up during the trial of the case that is -- you feel is necessary to close the courtroom, bring it to my attention, I'll do it. I'll give you a certain amount of time to, you know, identify those portions of the record that need to be maintained under seal once -- once you get your copies of the record, as well as whatever exhibits. I'll have the clerk, you know, hold the exhibits and not release the exhibits to the public for a certain after the trial, but what's the matter with that procedure?

1                   MR. VERHOEVEN: That procedure is perfect,  
2 Your Honor. That's all we -- that's all we seek, and I  
3 will point out that the parties have agreed for direct  
4 examination purposes to provide each other with a notice  
5 the day before of the exhibits that they intend to use.  
6 And we -- hopefully we can meet and confer that evening,  
7 next morning and -- and if there is an issue, present it  
8 to you with the most efficient and nondestructive manner  
9 possible.

10                  THE COURT: I mean, I've -- I've read the  
11 papers. My -- my concern is that -- my real concern is  
12 that my experience with this procedure has resulted in  
13 very limited periods of time that the courtroom has been  
14 closed because the courtroom is presumptively open. And  
15 what I don't want to have happen is every third  
16 question, we have an interrupt the flow of the  
17 proceedings and --

18                  MR. VERHOEVEN: I hear you, Your Honor. We  
19 have no intent to do that, and we're perfectly happy  
20 with the procedures you've outlined and, you know, we  
21 filed -- we filed our motion, just by way of  
22 explanation, Your Honor, a few months -- a couple of  
23 months ago, I think. Hadn't exchanged exhibit lists.  
24 We just wanted to make sure that we had on the record  
25 this is a concern of ours. As long as we can work

1 agreement says no exchange of exhibits for any witness  
2 or demonstratives for cross witnesses.

3 THE COURT: Well...

4 MR. VERHOEVEN: I'm going to have to read  
5 this, Your Honor. I -- there may be a mistake. I  
6 thought we had reached agreement on that, but I think  
7 that's sort of a side issue --

8 THE COURT: Well --

9 MR. VERHOEVEN: Don't need to take Your  
10 Honor's time on that. If we need to, we can address the  
11 efficient handling of exhibits -- hopefully the parties  
12 can work out an arrangement there. But what Your Honor  
13 has suggested in terms of handling what we believe to be  
14 trade secret information -- to protect Google's trade  
15 secret information, we would suggest would work.

16 THE COURT: Well, that's -- that's the  
17 procedure I'm going to adopt. And if it for some reason  
18 becomes unworkable during the course of the trial for  
19 whatever reason, lack of agreement as to how to  
20 implement it or whatever, I'll deal with that during the  
21 course of the trial.

22 So I guess for the purposes of the record,  
23 the motion is granted in part and denied in part to the  
24 extent I've just outlined.

25 Next issue that I've got on my plate is

1 CERTIFICATION

2

3 I HEREBY CERTIFY that the foregoing is a

4 true and correct transcript from the stenographic notes

5 of the proceedings in the above-entitled matter to the

6 best of my ability.

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10 SHELLY HOLMES Date

11 Deputy Official Reporter

State of Texas No.: 7804

12 Expiration Date: 12/31/10

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